



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Elizabeth C. Jensen McMaster

5 IBIA 61 (04/06/1976)

Also published at 83 Interior Decisions 145

Judicial review of this case:

Dismissed, *McMaster v. U.S. Department of the Interior*, No. C76-129T  
(W.D. Wash. June 29, 1978)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ESTATE OF ELIZABETH C. JENSEN McMASTER

IBIA 76-9

Decided April 6, 1976

Appeal from an order denying petition for rehearing.

Dismissed.

1. Indian Probate: Trust Property: Generally

Where trust patents for allotments for lands were issued in conformity with the General Allotment Act and contained usual provision that the United States would hold lands subject to statutory provisions and restrictions for a period of years, in trust for the sole use and benefit of Indians, and lands were chiefly valuable for their timber, the restraint

upon alienation, effected by terms of trust patents, extended to timber and proceeds derived therefrom as well as to lands.

APPEARANCES: Oberquell and Ahlf, by Argal D. Oberquell, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This case is before the Board on appeal from an order of Administrative Judge Robert C. Snashall, denying petition for rehearing.

The decedent, Elizabeth Jensen McMaster, an allotted Quinault, died intestate possessed of trust property on July 1, 1974. After hearing held at Tacoma, Washington, on May 21, 1975, the Administrative Law Judge found the heirs of the decedent, in accordance with the laws of the State of Washington, to be:

Raymond C. McMaster	Non-Indian-husband-	1/2 (Non-trust)
Ivan Keith Farrow	son-	1/6
Bruce Dennis Farrow	son-	1/6
Dennis Merle Farrow	grandson-	1/6

The trust property belonging to the decedent at the time of her demise consisted of decedent's allotment described as: SW 1/4 NE 1/4 Sec. 18, T. 22 N., R. 11 W., and NW 1/4 SE 1/4 Sec. 7, T. 22 N. R. 12 W., W.M., Washington, consisting of 80 acres, and approximately \$351,947.99 on deposit in her Individual Indian Money Account, apparently the proceeds from the sale of timber on said land allotment.

At the hearing, the decedent's surviving spouse submitted for consideration an agreement entitled Community Property Agreement, executed by the decedent and her surviving spouse on July 24, 1973, before a notary of Olympic, Washington. The agreement was not approved by the Secretary of the Interior, and there is no evidence in the record that it was ever presented to him for his approval.

The community property agreement referred to above, in substance provides that:

1. All community property presently owned by the parties or hereafter acquired by them shall be subject to the terms and conditions of this agreement.

2. At the time of the death of either of the parties hereto, any separate property of the person passing away shall be deemed at that time to have the status of community property and be

included as a part of community property of the parties, subject to the terms and conditions hereof.

3. Upon the death of either of the parties hereto title to all community property as herein defined shall immediately vest in fee simple in the survivor.

The Judge essentially found that the community property agreement was null and void because the agreement was not approved by the Secretary of the Interior since the allotted lands and the proceeds derived from the sale of the timber thereon were impressed with a trust, the trustee being the Secretary of the Interior.

A petition for rehearing was thereafter denied by the Judge. Whereupon, the surviving spouse filed a timely appeal, contending the community property agreement was valid. He further contends that by virtue of this agreement, all moneys in the IIM account and the allotted land belonging to the decedent passed to the surviving spouse immediately upon her death; and that in addition, the individual Indian moneys that accrued from timber sales prior to the death of his late wife should have been paid out to her because she was never mentally incompetent though she was physically disabled from a stroke in June 1972.

We consider the crux of this case to hinge on whether or not the decedent, an Indian married to a non-Indian, may enter into a contract regarding the alienation of trust property without the consent and approval of the Secretary of the Interior.

By virtue of the Act of February 8, 1887, hereinafter referred to as the General Allotment Act, and other statutory enactments, certain lands were allotted and trust patents issued relating to individual Indians, including the decedent. The patents contained the usual restrictions against alienation of title and inability to contract, and provided that the United States would hold the title in trust for the allottee for a period of 25 years. See 25 U.S.C. § 348, 24 Stat. 389.

The trust period was extended by Executive Order and the restrictions have never been removed. See Executive Order No. 10191, December 13, 1950, 15 FR 8889.

The General Allotment Act further provides that the Secretary of the Interior may in his discretion whenever he is satisfied that an Indian allottee is competent and capable of managing his or her affairs issue a patent in fee simple. 25 U.S.C. § 349, section 6 of the Act

An Indian, competent and capable of managing his affairs, must at least have sufficient ability, knowledge, experience, and judgment to enable him to conduct negotiations for the sale of his land, and to care for, manage, invest or dispose of its proceeds with a reasonable degree of prudence and wisdom and an uneducated Indian, inexperienced in business affairs is incapable of managing his affairs, and especially incompetent to sell his land and handle the proceeds thereof. U.S. v. Debell, 227 F. 760 (8th Cir. 1915).

The judgment of the Secretary of the Interior as to removing restrictions upon alienation of Indian allotted lands will not be disturbed by the courts, unless clearly arbitrary. United States v. Lane, 258 F. 520 (1919); see also 25 U.S.C. § 331 et seq., 406.

As the trustee of the Indians, the Secretary of the Interior administers the trust that arose by virtue of the General Allotment Act and he has the right to administer the trust as he sees fit and terminate it when he gets ready. He has the right to discharge himself of the trust by paying the money to the allottee or to a legally appointed guardian, provided there is nothing in the law prohibiting it.

So long as the lands and their proceeds are held or controlled by the United States, and the terms of the trust have not expired, they are instrumentalities employed by the United States in the lawful exercise of its powers of government to protect Indians. It does establish the rule that the proceeds of the sale are impressed with the same trust that existed upon the land, but only insofar as the United States retains the possession or control of same.

The Act of May 27, 1902, 32 Stat. 275, section 8, authorizes the adult heirs of any deceased Indian to whom allotted lands have been patented to sell inherited lands subject to the approval of the Secretary of the Interior and provides that when so approved full title shall pass to the purchaser, the same as if a final patent without restriction on the alienation had been issued.

It has been consistently held that where lands were allotted under the General Allotment Act restraining alienation, the Act of 1902 did not vacate the trust of such lands held by the United States, but, on the sale of the lands with the consent of the Secretary of the Interior by the heirs of the deceased allottee, the trust becomes attached to the proceeds, which are payable to such heirs under rules prescribed by the Interior Department. The statute provides that the land may be sold with the consent of the Secretary of the Interior. It thus permits a change in form

of the trust property from land to money. This change may only be effected with the consent of the trustee represented in the person of the Secretary of the Interior. No citation of authority is needed to sustain the general doctrine that into whatever form trust property is converted, it continues to be impressed with the trust. That doctrine must be applied to the present case in the absence of the expressed intention of Congress not to end the trust but to permit a change of the form of the trust property. National Bank of Commerce v. Anderson, 147 F. 87 (9th Cir. 1906); United States v. Thurston County, 143 F. 287 (8th Cir. 1906).

Restrictions imposed on alienation of Indian land are not personal to the allottee but run with the land. United States v. Reily, 290 U.S. 33, 54 S. Ct. 41 (1933).

The granting of citizenship to an Indian allottee or his heirs does not affect property in trust pursuant to the Indian Allotment Act. Spriggs v. United States, 297 F.2d 460 (10th Cir. 1961).

[1] Where the United States holds allotted lands, subject to statutory provisions and restrictions in trust for sole use and benefit of Indians, and lands were chiefly valuable for their timber, the restraint upon alienation, effected by terms of trust

patents, extended to timber and proceeds derived therefrom as well as lands. United States v. Eastman, 118 F.2d 421 (9th Cir.), cert. denied, 314 U.S. 635, 62 S. Ct. 68 (1941).

We find that the community property agreement, relating to allotted lands and proceeds derived therefrom, entered into by the appellant and the decedent without the consent and approval of the Secretary of the Interior is null and void for the reasons stated, supra.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, it is ordered that the Interim Order and Final Order Determining Heirs entered June 5 and July 10, 1975, respectively, be, and the same are hereby, AFFIRMED, and the appeal herein is DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

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//original signed  
Mitchell J. Sabagh  
Administrative Judge

We concur:

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//original signed  
Alexander H. Wilson  
Administrative Judge

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//original signed  
Wm. Philip Horton  
Member